IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 102 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
M/S.GANESH TRADING CO., - Respondent(s)

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Appearance :
MR BB NAIK for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR JUSTICE R. S. GARG
and
HONOURABLE MR JUSTICE D.H. WAGHELA

Date : 04/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Heard Mr B B Naik, learned Standing Counsel for the Revenue. None for the respondent-assessee, though

served.

2. The Income-Tax Appellate Tribunal, Ahmedabad Bench 'B', at the instance of the Revenue, under section 256 (1) of the Income Tax Act, 1961, has referred the following question for opinion of this Court which arises out of Income Tax Appeals No. 646, 3899 and 5603/Ahd/1991 relating to the Assessment Years 1984-85, 1985-86 and 1986-87:

> *"Whether the Appellate Tribunal is right in law and on facts in deleting the clubbing of income of three sister concerns, namely, (i) Tea Trading Company, (ii) Bhagwati Traders and (iii) Sahajanand Trading Company in the hands of the Assessee ?"*

3. Shri B.B. Naik, learned Standing Counsel for the Department, after taking us to the findings recorded by the Tribunal with his usual vehemence strenuously argued that the findings recorded by the Tribunal are perilously bordering perversity, therefore, the findings cannot be approved and are required to be

reappreciated.

4. The question of perversity of the findings would assume importance only when it is found that a Court or a Tribunal has read something which is not available in the records, ignored to read something which has material bearing on the fact and it is available on the record or the Tribunal or the Court records a finding which is shockingly against the preponderance of probability to which even a man of ordinary prudence would not concur. The Appellate Court, in its routine course, can rely upon or disturb the findings recorded by the subordinate Court or the Tribunal, but the scope of interference would be narrower in a Reference made under section 256 (1) of the Act. The endeavour of each and every Court and Tribunal would be to find whether the findings are based on some evidence or it is contrary to the records. If the Court or the Tribunal finds that some evidence is available to support the finding, then simply because yet another view is possible, the Appellate Court or the High Court in its jurisdiction under section 260, would

not interfere with the findings.

5. After going through the complete records and reasoning given by the Tribunal, we must immediately hold that the Tribunal has properly appreciated the evidence and recorded its findings in accordance with law in coming to the conclusion that the income of the three sister concerns namely, (i) Tea Trading Company (ii) Bhagwati Traders and (iii) Sahajanand Trading Company could not be clubbed.

6. The question, referred to us is answered in affirmative against the interest of the Revenue. The Reference is accordingly disposed of. No costs.

[R. S. Garg, J.]

[D. H. Waghela, J.]

msp